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diem cost in item E, the commissioner shall deny the special needs rate exception application unless the per diem cost can be adjusted to meet the client's needs within the per diem cost in item E or the commissioner grants a variance under part 9510.1100 [Emergency].

Subp. 5. Computation of special needs rate exception payment. The special needs rate exception payment must be calculated as follows:

A. The cost of additional equipment allowed in accordance with subpart 2 shall be paid as a lump sum payment during the first billing period following approval of the special needs rate exception.

B. Except as provided in item C, in order to compute the special needs rate exception payment for personnel costs, the costs of additional personnel allowable according to subpart 2, items A and B, must be divided by the estimated number of days the staff intervention will be needed.

C. In order to compute the special needs rate exception per diem for personnel costs which vary during the estimated staff intervention period, the costs must be assigned on a monthly basis proportionate to the actual personnel costs incurred and then divided by the number of client days in the month.

D. Costs computed under items B and C shall be reimbursed as incurred and billed.

9510.1100 [Emergency] VARIANCE REQUEST.

Subpart 1. Variance request. The county may request a variance from the commissioner to approve a provider application which exceeds the limit in part 9510.1090 [Emergency], subpart 4 by up to 15 percent, if the provider meets the criteria in subpart 2.

Subp. 2. Eligible provider. A provider may apply for a variance if the provider provides or plans to provide training and habilitation services to a client who resides in an ICF/MR which has a per diem rate equal to or greater than 85 percent of the medical assistance per diem cost of providing services to mentally retarded persons in the state hospitals.

Subp. 3. Submittal of request. The county shall submit the written variance request, including documentation showing that the provider meets the criteria for a variance, with the county's application for the special needs rate exception payment.

Subp. 4. Review of variance request; notification. The

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commissioner shall review the variance request with the county's application for the special needs rate exception payment. If the county's application meets all of the requirements in parts 9510.1020 to 9510.1140 [Emergency] except the limitation in part 9510.1090 [Emergency] subpart 4 and the provider is eligible to apply for a variance under subpart 2, the commissioner shall approve the request. If the commissioner denies the variance request, the commissioner shall notify the county, provider, client, and the client's legal representative of the reasons for the denial.

9510.1110 [Emergency] EMERGENCY PROCEDURE.

Subpart 1. Definition. For the purposes of this part, an emergency is either a postoperative condition resulting from unplanned surgery, or the sudden onset of self-injurious or aggressive client behavior which results in an immediate danger to self or others; which would result in immediate admission to the state hospital in the absence of intervention.

Subp. 2. Emergency approval. In an emergency, the county may approve the addition of staff necessary to intervene in the emergency without obtaining prior approval of a special needs rate exception from the commissioner, only staff costs shall be allowed under this part. In an emergency, the county shall:

A. notify the commissioner by telephone no later than the next working day and in writing within three working days of the client's situation, and state in the notice a description of the behaviors or medical condition requiring emergency intervention and the actions taken by the provider to control the behaviors;

B. require the provider to submit an application completed in accordance with parts 9510.1020 to 9510.1140 [Emergency] within ten working days; and

C. submit to the commissioner an application for a special needs rate exception completed and submitted in accordance with parts 9510.1020 to 9510.1140 [Emergency].

Subp. 3. Reimbursement for emergency services. A special needs rate exception for the costs identified in part 9510.1090 [Emergency], subpart 2, item A, for staff approved in accordance with subpart 2 shall be reimbursable for a period not to exceed two weeks from the date the county notifies the commissioner of the emergency. The provider shall submit an application completed in accordance with parts 9510.1020 to 9510.1140 [Emergency], for continuation of the special needs rate exception for more than two weeks. The county shall notify the commissioner if the provider fails to submit the application required in subpart 2, item B, and the commissioner shall discontinue the emergency special needs rate exception payment.

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9510.1120 [Emergency] DURATION OF SPECIAL NEEDS RATE EXCEPTION.

Subpart 1. Maximum length of time for a special needs rate exception. A special needs rate exception shall be established for a period not to exceed one year from the date of receipt of the county application by the commissioner except as provided in subpart 2.

Subp. 2. Renewals. If the county determines that a special needs rate exception should be continued after the period initially approved, the county shall submit a new application in accordance with parts 9510.1020 to 9510.1140 [Emergency] at least 30 days prior to the date the special needs rate exception is scheduled to terminate. The county application for a renewal must contain a program and fiscal evaluation demonstrating the effectiveness of the initial special needs rate exception. Special needs rate exceptions for staff intervention must be limited to a one-year renewal per identified special need.

Subp. 3. Terminations. The commissioner may terminate the special needs rate exception prior to the date stated in the application upon recommendation by the county. The county may recommend termination if:

A. the rate is no longer necessary because other funds are available;

B. there is evidence that the funds have not been used for the purposes stated in the application;

C. the client's needs have changed and can be met without the special needs rate exception; or

D. no progress has been made in rectifying the identified problem area. This item shall not apply to services provided to clients with degenerative diseases if the criteria in subitems (1) to (4) are met:

(1) the service is required due to the degenerative disease;

(2) the client's physician has determined that no progress in the identified problem area can be expected;

(3) the county has submitted the determination by the client's physician to the commissioner and requested an exception to this item; and

(4) the request for an exception to this item has been reviewed by the state medical review team and the state medical review team has verified that no progress in the identified problem area can be expected.

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The commissioner shall notify the county and the provider 15 days before discontinuing payments due to termination.

9510.1130 [Emergency] RECORDS, REPORTS, AUDITS, AND REPAYMENT.

Subpart 1. Records. The provider shall maintain complete program and fiscal records and supporting documentation identifying the services and costs provided under the special needs rate exception. The costs must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions of parts 9505.1750 to 9505.2150.

Subp. 2. Reports. The county shall submit items A and B to the commissioner.

A. A quarterly program and fiscal review of the overall effectiveness of the services to be provided under the special needs allowance unless the commissioner determines that a different schedule of reviews is needed to evaluate the success of the program or redetermine the special needs rate exception payment. The review must be submitted no more than 30 days after the end of each quarter in which a special needs rate exception is in place and must include:

(1) the provider's compliance with the application;

(2) the client's progress in attaining the measurable behavioral outcomes in the individual program plan for which the special needs rate exception was requested; and

(3) the county and provider's plans to reduce reliance on the special needs rate exception.

B. A final report submitted within 90 days of termination of a special needs rate exception which documents the following:

(1) the extent to which the program goals identified in the special needs rate exception application were accomplished;

(2) the total amount of money paid to the provider through the special needs rate exception payment for equipment and actual costs and types of equipment purchased;

(3) the amount of expenditures incurred by the provider for costs allowable under part 9510.1090 [Emergency], subpart 2; and

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(4) the total amount of unexpended funds determined by subtracting subitem (3) from subitem (2).

Subp. 3. Audits. The commissioner may conduct program and fiscal audits of any provider receiving a special needs rate exception to identify any overpayments made to the provider and ensure compliance with parts 9510.1020 to 9510.1140 [Emergency].

Subp. 4. Repayment. Any overpayments to the provider included in the special needs rate exception payment must be paid back to the medical assistance program within 60 days of the date the provider receives the notice of overpayment from the county or the commissioner. No retroactive payment must be made if the provider's costs exceed the special needs rate exception payment.

9510.1140 [Emergency] APPEALS.

Subpart 1. By provider. A provider whose application for a special needs rate exception is denied or not acted on within the deadlines in part 9510.1060 [Emergency], subpart 1, or whose special needs rate exception is suspended, reduced, or terminated by the county may appeal the action or decision to the commissioner. The appeal must be submitted to the commissioner in writing within 30 days of the date the provider received notification of the action or decision. The appeal must state the reasons the provider is appealing the county's action or decision including the bases for the county's action or decision which are disputed, the specific sections of the provider's application which the provider is relying on for the appeal, and an explanation of why the provider disagrees with the county's action or decision.

The commissioner shall review the application and supporting documentation submitted to the county and any additional documents submitted with the appeal to determine if the provider can prove by a preponderance of evidence that they are eligible for a special needs rate exception and in compliance with parts 9510.1020 to 9510.1140 [Emergency]. No special needs rate exception payment will be made pending the outcome of the appeal.

Subp. 2. By county. If the county disagrees with the commissioner's decision on the county application, the county may appeal the decision to the commissioner and request reconsideration. To be reconsidered, the appeal must be filed in writing, with the commissioner, within ten days of the date the commissioner gave notice to the county of the decision on the county application. The appeal must state the reasons why the county is appealing the commissioner's decision and present evidence explaining why the county disagrees with the commissioner's decision. The commissioner shall review the evidence presented in the county's appeal and send written

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notification to the county of the decision on the appeal. No special needs rate exception payment shall be made pending the outcome of the appeal. The commissioner's decision on the appeal shall be final.

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Supplement 5 to
Attachment 4.19D
Pages 1 and forward

State MINNESOTA

Minnesota Rules, parts 9510.1020 to 9510.1140 (Emergency)
Relating to Special Needs Rate Exception for Very Dependent
Persons with Special Needs

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